

IRVIN WALL

IBLA 82-1003

Decided March 28, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers OR 32864-65.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in the senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

APPEARANCES: Irvin Wall, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Irvin Wall has appealed from two decisions of the Oregon State Office, Bureau of Land Management (BLM), each dated June 3, 1982, rejecting his over-the-counter noncompetitive oil and gas lease offers OR 32864 and OR 32865 because they included land leased to a senior offeror in leases OR 25014 and OR 24983.

[1] Wall filed oil and gas lease offer OR 32864 on September 10, 1981, describing land overlapping senior offer OR 25014 filed by Tyrex Oil Company (Tyrex) on October 14, 1980. Wall's lease offer OR 32865 was also filed on

September 10, 1981, and described land overlapping in part Tyrex's lease OR 24983. Those lands sought by Wall that overlapped Tyrex's senior offer and lease were rejected.

Wall asserts that Tyrex's offers should have been disallowed because Tyrex failed to initial an attachment to its offer setting forth its statement of interest. We note that the Board has sustained the rejection of simultaneously filed oil and gas lease applications which have not been completed pursuant to the instructions on the form, even for relatively minor defects. 1/ These decisions, however, were based on regulatory language pertinent to simultaneously filed applications requiring that they be "fully executed" or "completed." 2/ The same regulation does not apply to offers filed over-the-counter, and the Department has not required rejection of such offers where failure to complete an item did not violate a statutory or regulatory requirement. One example of this is our decision in Jas. O. Breene, Jr., 39 IBLA 43 (1979). Item 5 on the oil and gas lease offer form requires an applicant to indicate whether or not he is a native-born or naturalized citizen. Breene failed to do so and his offer was rejected for this reason. The Board reversed, noting that even though the offeror had failed to indicate whether he was a native-born or naturalized citizen, his offer still complied with the applicable regulatory requirements. 3/ More recently, this Board has refused to direct the cancellation of leases issued pursuant to over-the-counter offers which had failed to indicate the county in which the land was located 4/ or which had omitted the meridian in describing land in a state which was governed by only one meridian. 5/ Similarly, we hold that the failure by Tyrex to initial the statement of interest which accompanied its offers is not among the class of defects which warrants cancellation of a lease. The offers were signed by the president of Tyrex. Item 6 on the form refers to the attachment, thereby incorporating it by reference and making it effective regardless of whether or not it was initialed.

[2] Thus, Wall has failed to provide a valid reason why Tyrex's offers should have been considered defective. Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, 30 U.S.C. § 226(c) (1976), a junior offer is properly rejected to the extent that it includes land designated in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective. Irvin Wall, 69 IBLA 371 (1983); Irvin Wall, 68 IBLA 243 (1982).

1/ E.g., Albert E. Mitchell, 20 IBLA 302 (1975) (affirming rejection of simultaneous drawing entry card where applicant failed to indicate state in which parcel was located).

2/ The offer in Mitchell, supra, was held to be not "fully executed" as required by 43 CFR 3112.2-1 (1975). The current version of this regulation requires that applications be "completed."

3/ It should be noted that under 43 CFR 3111.1-1(e), certain specified defects in over-the-counter offers will not result in loss of priority even though the defects are violations of requirements established by regulation. In the instant case, the defect in Tyrex's offers does not violate any regulatory requirement.

4/ Irvin Wall, 68 IBLA 311 (1982).

5/ Irvin Wall, 68 IBLA 308 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

